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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CINDY KIRK, ENIKO POPESCU,
RONALD SCOTT BOLDER, and CRAIG ELLIRT TIMMERMANN

Appeal 2008-2566
Application 10/021,505
Technology Center 2100

Decided:¹ March 17, 2009

Before LANCE LEONARD BARRY, ST. JOHN COURTENAY III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-18. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The invention at issue on appeal is a graphical user interface featuring two panes. The first pane displays representations of entities from Layer 3 of the Open System Interconnection ("OSI") model. The second pane displays representations of entities from Layer 2 of the OSI model. "The OSI Layer 3 entities are provisioned over the OSI Layer 2 entities." (Spec. ¶ [16].)

ILLUSTRATIVE CLAIM

13. A method of managing a communications network in a centralized network management context via a graphical user interface, the method comprising steps of:

- a. displaying in a first pane of a single graphical user interface window representations of OSI Layer-3 entities provisioned in the communications network over OSI Layer-2 entities; and
- b. simultaneously and selectively displaying in a second pane of the single graphical user interface window representations of OSI Layer-2 entities corresponding to at least one OSI Layer-3 entity selected in the first pane.

PRIOR ART

Engel	U.S. 6,115,393	Sep. 5, 2000
Weinberg	U.S. 6,144,962	Nov. 7, 2000

REJECTION

Claims 1-18 stand rejected under 35 U.S.C. § 103(a) as obvious over Engel and Weinberg.

CLAIM GROUPING

When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

37 C.F.R. § 41.37(c)(1)(vii).

Here, the Appellants argue claims 1-18, which are subject to the same ground of rejection, as a group. (Br. 9-20.) We select claim 13 as the sole claim on which to decide the appeal of the group.

ISSUE

The Examiner finds that "Engel does show propagating node status up through the layers that it would be visible on a network management station and two PAN display (Fig. 18) in Summary Tool." (Ans. 12.) The Appellants make the following argument

Engel does not teach or suggest a graphical user interface having a single window in which two panes are displayed

simultaneously, the first pane displaying OSI Layer-3 entities, and the second pane displaying underlying OSI Layer-2 entities corresponding to a selected one of the OSI Layer-3 entities shown in the first pane.

(Br. 12.) Therefore, the issue before us is whether the Appellants have shown that the phrases "representations of OSI Layer-3 entities provisioned in the communications network over OSI Layer-2 entities," "window representations of OSI Layer-2 entities," and "at least one OSI Layer-3 entity" are entitled to patentable weight.

LAW

"Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious." *Ex parte Curry*, 84 USPQ2d 1272, 1274 (BPAI 2005) (citing *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004)), *aff'd*, No. 06-1003 (Fed. Cir. 2006). "[W]hen descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability[.]" *Curry*, 84 USPQ2d at 1274 (citing *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)).

FINDINGS OF FACT ("FFs")

1. Claim 13 (emphases added) recites in pertinent part the following limitations:

- a. displaying in a first pane of a single graphical user interface window *representations of OSI Layer-3 entities provisioned in the communications network over OSI Layer-2 entities*; and

b. simultaneously selectively displaying in a second pane the single graphical user interface window *representations of OSI Layer-2 entities* corresponding to *at least one OSI Layer-3 entity* selected in the first pane.

2. Engel's "Summary Tool displays a basic summary tool screen such as is shown in FIG. 18. The summary tool screen has three panels, namely, a control panel 602, a values panel 604, and a dialogs panel 606." (Col. 28, ll. 53-56.)

3. "The control panel includes the indicated mouse activated buttons." (*Id.* ll. 56-57.) A "protocol button invokes a pop up menu which provides an exclusive set of protocol layers which the user may select." (Col. 29, ll. 14-16.)

4. "The user invokes the apply button to indicate that the selection process is complete and the . . . protocol . . . should be applied. This then updates the screen using the new parameter set that the user selected." (*Id.* ll. 29-32.)

5. "The set of statistics for the selected parameter set is displayed in values panel 604. The members of the sets differ depending upon, for example, what protocol was selected." (*Id.* ll. 35-37.)

ANALYSIS

Because the phrases "representations of OSI Layer-3 entities provisioned in the communications network over OSI Layer-2 entities,"

"representations of OSI Layer-2 entities," and "at least one OSI Layer-3 entity" (FF 1) "cannot alter how the process steps are to be performed to achieve the utility of the invention" *Ex parte Mathias*, 84 USPQ2d 1276, 1279 (BPAI 2005), these are not entitled to patentable weight. Applying this interpretation, the method of claim 13 merely requires displaying in a first pane of a window first data and simultaneously displaying in a second pane of the window second data corresponding to at least one datum selected in the first pane.

We find that the Engel's displaying of buttons in the control panel (FF 3) of its Summary Tool (FF 2) constitutes displaying in a first pane of a window first data. We further find that the reference's simultaneously displaying in the values panel statistics for the selected protocol constitutes simultaneously displaying in a second pane of the window second data corresponding to at least one datum selected in the first pane.

CONCLUSION

Based on the aforementioned facts and analysis, we conclude that the Appellants have not shown that the phrases "representations of OSI Layer-3 entities provisioned in the communications network over OSI Layer-2 entities," "window representations of OSI Layer-2 entities," and "at least one OSI Layer-3 entity" are entitled to patentable weight.

ORDER

We affirm the rejection of claims 1-18.

Appeal 2008-2566
Application 10/021,505

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

msc

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